
CONTRACT OF INSURANCE

LOAN NO. []

STATE OF CALIFORNIA
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

This **CONTRACT OF INSURANCE**, dated as of [], and effective as of [], is by and among [], a California nonprofit public benefit corporation (**Corporation**) [[a political subdivision of the State of California (**District**)]], the **Office of Statewide Health Planning and Development of the State of California (Office)**, and **California Health Facilities Financing Authority**, a public instrumentality of the State of California (**Authority**).

WHEREAS, the Office is authorized to enter into this Contract of Insurance pursuant to California Health and Safety Code sections 127045 and 129105;

WHEREAS, the Director of the Office is authorized to enter into this Contract of Insurance on behalf of the Office pursuant to California Health and Safety Code section 127010 and California Government Code section 11150, *et seq.*;

WHEREAS, the undersigned Deputy Director of the Office was appointed by the Director of the Office to act on the Director's behalf pursuant to Delegation Order 93-7 effective November 15, 1993, and is so authorized by California Health and Safety Code section 7 and California Government Code sections 1194, 7 and 18572;

WHEREAS, the Authority is authorized to enter into this Contract of Insurance pursuant to California Health Facilities Financing Authority Act (constituting Part 7.2 of Division 3 of Title 2 of the California Government Code);

WHEREAS, the Corporation is authorized to enter into this Contract of Insurance pursuant to the Corporation's resolution dated [];

WHEREAS, the Authority desires to issue its Insured Revenue Bonds [(____)] Series 199[____] in the principal amount of [] dollars [(\$____,____,000) (**Series 199_ Bonds**)] [(**Certificates**)]

pursuant to an Indenture dated as of [], (**Indenture**) [(**Trust Agreement**)], by and between the Authority and [], as trustee (**Trustee**), and to lend the proceeds of the Series 199[] Bonds to the Corporation pursuant to a Loan Agreement, dated as of [], (**Loan Agreement**) between the Authority and the Corporation, which shall be secured by a Deed of Trust (**Deed of Trust**) on certain of the Corporation's property and a pledge of the Corporation's Gross Revenues;

WHEREAS, the Authority and the Corporation desire to obtain the Health Facility Construction Loan Insurance (**Insurance**) insuring the payment of the Series 199_ Bonds [(**Installment Payments evidenced by the Certificates of Participation**)], and the Office is willing to extend the Insurance;

WHEREAS, the Office has reviewed the final form of the Series 199[] Bonds, the Indenture, the Loan Agreement, the Deed of Trust, and the American Land Title Association title insurance policy issued by [] Title Insurance Company insuring the Corporation's title to that property which is subject to the Deed of Trust and naming the Trustee and the Office as beneficiaries, as their respective interests may appear;

WHEREAS, the Office has approved the Corporation's application for insurance of the Series 199_ Bonds [(**Installment Payments evidenced by the Certificates of Participation**)]; and

WHEREAS, in consideration of the Insurance and in order to comply with the requirements of Chapter 1, Part 6, Division 107 of the Health and Safety Code of the State of California, cited as the "California Health Facility Construction Loan Insurance Law," as now in effect and as it may from time to time hereafter be amended or supplemented (**Insurance Law**), the Corporation, the Office and the Authority have entered into a Regulatory Agreement, dated as of [], and effective as of [] (**Regulatory Agreement**), regulating the terms and conditions of the Insurance of the Series 199_ Bonds [(**Installment Payments evidenced by the Certificates of Participation**)];

NOW, THEREFORE, in consideration of these presents and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto mutually agree, and agree for the benefit of the holders of the Series 199[] Bonds from time to time and the Trustee, as follows:

1. **Definitions.** Unless the context clearly otherwise requires, all capitalized terms used herein shall have the meanings assigned to such terms in the Regulatory Agreement.

2. **Insurance.** The Office hereby declares and agrees that the Series 199[] Bonds [(**Installment Payments evidenced by the Certificates of Participation**)] are eligible for the Insurance under the Insurance Law and that the payment of the principal of and the accrued and unpaid interest on the insured principal of Series 199_ Bonds [(and that the payment of the principal and interest components of the Installment Payments payable to the Trustee for the benefit of the Certificate Holders)] and, to the extent permitted by the Insurance Law, all other amounts secured by the Indenture, **are insured** under the Insurance Law. However, payments from the Trustee to the Bondholders are not insured.

3. **Incontestability.** Pursuant to Insurance Law Section 129110, such Insurance shall be incontestable from the date of the execution of this Contract of Insurance, except in case of fraud or misrepresentation on the part of the lender (as defined in Insurance Law Section 129010(i)). Such Insurance shall be subject to the terms and conditions of the Regulatory Agreement, which are incorporated herein by reference.

4. **Approval of Documents.** The Office approves the execution and delivery of the Loan Agreement, the Indenture and the Deed of Trust.

5. **Completion of Project.** The Corporation shall accomplish the Project with all practical dispatch and in an economic manner.

6. **Disbursement of Proceeds.** Prior to each disbursement of funds to the Corporation pursuant to the provisions of the Indenture, the Corporation shall apply to the Office, by submission of the Office's Form OSH-CM-134 and supporting documentation, for an authorization of the disbursement of funds to the Corporation pursuant to the Indenture, pursuant to Insurance Law Section 129030. Certification by the Office of the Form OSH-FD-134 submitted to the Office by the Corporation shall constitute the Office's authorization and consent to the disbursement of funds to the Corporation.

7. **Compliance with Law and Documents.** The Authority and the Corporation shall, to the extent they are respectively obligated thereunder, comply with the Insurance Law and the terms, conditions and covenants of the Series 199[] Bonds, the Loan Agreement, the Indenture, the Deed of Trust, the Regulatory Agreement and this Contract of Insurance.

8. **Premium Payment.** The Corporation shall pay all future premiums required for the Insurance to the Office on or before the anniversary of the effective date hereof, in each year, provided that no failure by the Corporation to so comply or failure by the Trustee to enforce such compliance shall result in cancellation of the Insurance of the Series 199[] Bonds, except as provided in Section 9 hereof or in Insurance Law Sections 129175 to 129185.

Notwithstanding any other provision of this Section, the Authority shall have no obligation to make any premium payment except from Revenues received by it pursuant to the Loan Agreement.

9. **Termination of Insurance.** The Insurance provided herein may be terminated by the Office only upon the occurrence of any of the following:

a. **Nonpayment of Premium.**

(1) **First Notice.** Should the premium charges for the Insurance under the Insurance Law be more than ten (10) days delinquent, the Office shall notify the Authority, the Corporation and the Trustee in writing. The Authority, the Corporation and the Trustee shall have the opportunity to pay any such premium charges; provided, however, that the Trustee shall be obligated to pay such premium charges solely from funds available therefor held under the Indenture.

(2) **Second Notice.** If the delinquency in paying premium charges continues more than thirty (30) days after sending of the Office's first notice to the Authority, the Corporation and the Trustee as herein provided, the Office shall notify the Authority, the Corporation and the Trustee (for the benefit of the Bondholders), in writing of such continued delinquency, shall request the Trustee to notify the Bondholders of such continued delinquency, and shall specify the date on which the Insurance shall terminate if the premium charges remain unpaid. The Authority, the Corporation, the Trustee or the Bondholders shall

have the opportunity to pay any such premium charges; provided, however, that the Trustee shall be obligated to pay such premium charges solely from funds available therefor held under the Indenture.

(3) If the delinquency in paying premium charges continues, on the thirty-first (31st) day after sending of the Office's second notice to the Trustee (for the benefit of the Bondholders) as provided in the preceding subdivision, the Insurance shall be terminated and upon such termination shall become null and void.

(4) The two notices by the Office described in this subsection shall be mailed to the Authority, the Corporation and the Trustee at the addresses as required in the Regulatory Agreement.

b. **Payment of Insurance by the Office.** Upon the payment in full by the Office of the Insurance of the Series 199_ Bonds pursuant to the Insurance Law.

c. **Payment of Bonds; Defeasance.** Upon the payment in full of the principal of and the accrued and unpaid interest on the Series 199[_] Bonds (including defeasance of the Series 199_ Bonds) and all other amounts owing to the Bondholders and the Trustee under the Indenture so that the Series 199_ Bonds are not Outstanding.

d. **Joint Request.** Upon the joint written request of the Authority, the Corporation and all the Bondholders as provided in Insurance Law Section 129185.

e. **Foreclosure or Conveyance; Surrender of Series 199_ Bonds.** If the Deed of Trust is judicially foreclosed as to such property, or the Authority, the Trustee or the Bondholders non-judicially foreclose or otherwise acquire such property after a Loan Default Event and the Authority and the Trustee do not execute and deliver to the Office a grant deed, trustee deed or quitclaim deed covering such property within sixty (60) days of such foreclosure or other acquisition; or if any Series 199_ Bonds are surrendered to the Trustee to be exchanged for debentures and such Series 199_ Bonds are not surrendered to the Office within sixty (60) days of receipt by the Trustee; provided that, if the required conveyance or surrender is restrained, enjoined, or otherwise prevented by any court or governmental body or agency, then the Authority and the Trustee shall have sixty (60) days to make the conveyance or surrender from the date such restraint or injunction is vacated, dismissed or discharged.

10. **Successors Bound.** This Contract of Insurance shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, successors in office or interest, and assigns, and shall be directly enforceable by the Trustee. The Office hereby consents to the Authority's assignment of its rights under this Contract of Insurance to the Trustee.

11. **Severability of Invalid Provisions.** The invalidity of any clause, part, or provision of this Contract of Insurance shall not affect the validity of the remaining portions hereof so long as the Insurance remains in effect.

12. **Agreement Represents Complete Agreement; Amendments.** Except as otherwise provided herein, this Contract of Insurance represents the entire contract among the parties. This Contract of Insurance may be amended, changed or modified by the written

agreement of the Office and the Corporation, provided that such amendment, change or modification shall not materially adversely affect the Holders.

13. **Headings and References.** The headings or titles of the several sections, subsections and subdivisions hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Contract of Insurance. All references herein to "sections," "subsections" and other subdivisions are to the corresponding sections, subsections or subdivisions of this Contract of Insurance. The words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Contract of Insurance as a whole and not to any particular section, subsection or subdivision hereof. Words of the masculine gender shall mean and include words of the feminine and neuter genders.

14. **Governing Law; Venue.** The laws of the State of California shall govern this Contract of Insurance, the interpretation thereof and any right or liability arising hereunder. Any action or proceeding to enforce or interpret any provision of this Contract of Insurance shall be brought, commenced or prosecuted in Sacramento County, California.

15. **Attorneys' Fees.** In the event of any action at law or in equity between the parties hereto to interpret or enforce any of the provisions of this Contract of Insurance, the nonprevailing party or parties to such litigation shall pay to the prevailing party or parties all costs and expenses, including actual attorneys' fees, incurred therein by such prevailing party or parties; and if such prevailing party or parties shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees may be included in and as part of such judgment. The prevailing party shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs of suit shall not recover attorneys' fees.

16. **Execution in Counterparts.** This Contract of Insurance may be executed in any number of counterparts, each of which shall be deemed for all purposes to be an original and all of which shall together constitute but one and the same instrument.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract of Insurance as of the day and year first above written.

CORPORATION:

By _____

Chief Executive Officer

**OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT
OF THE STATE OF CALIFORNIA**

By: David W. Werdegarr, MD, MPH
Director

By _____
Dennis T. Fenwick, J.D.
Deputy Director

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY

By Mat Fong, Chairperson

By _____

Deputy

[Seal]

Attest:

By _____
Executive Director